

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 248 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HEIRS OF PURSHOTTAM JINABHAI TANK

Versus

CHHUNILAL @ CHHEL BHAI JINABHAITANK

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Appearance:

Mr. A.H.Desai for Petitioners  
MR AN PATEL for Respondent No. 1

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 18/04/96

ORAL JUDGEMENT

By consent and at the joint request of the learned counsel for the respective parties, this appeal is taken up for final hearing today.

2. During the course of hearing and as a result of the discussion there is consensus between the learned counsel. Accordingly both the learned counsel agree that in view of the provisions of section of section 286 of

the Indian Succession Act read with explanation thereto and read with section 288 of the said Act, the District Delegate could not have any jurisdiction to decide the contested probate application, which resulted in the decision impugned in the present appeal. The learned counsel also agree that on the facts and circumstances of the case, it would be the District Judge, who would have jurisdiction to entertain a contested application of this nature u/s. 283 of the said Act.

In views of these provisions I am also of the same view.

3. In the premises, the aforesaid decision of the District Delegate impugned in the present appeal is quashed and set aside. The District Delegate shall return the petition (with all documents attached therewith) to the person by whom the application was made, so as to enable him to present the same before the District Judge and shall also transfer the R & P to the District Judge separately.

4. This appeal is therefore, accordingly allowed with no order as to costs. Decree accordingly.

D.S.permitted.